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FINAL INTERNAL AUDIT REPORT

CORPORATE SERVICES

REVIEW OF CONTRACT GOVERNANCE AND DOCUMENTATION

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INTRODUCTION

1. This report sets out the results of our audit of contract governance and documentation. The audit was carried out as part of the work specified in the 2019-20 Internal Audit Plan agreed by the Section 151 Officer and Audit Sub-Committee and the Internal Audit Recovery Plan for 2020/21. The controls we expect to see in place are designed to minimise the Council's exposure to a range of risks. Weaknesses in controls that have been highlighted will increase the associated risks and should therefore be addressed by management.
2. We carried out an audit of contract documentation in 2017 and it was given a 'Limited' assurance rating. Following the introduction of the Contracts Database and in view of the risks associated with not being able to locate contracts and their key supporting documentation, we included the subject as an area for review in the 2019/20 audit plan. Our review sought to give assurance that contracts have been signed and sealed by all parties, are retained securely and can be located readily. We also sought to confirm that key documents associated with the contract such as performance bonds and indemnities are retained, available and current.
3. We would like to thank all staff contacted during this review for their help and co-operation.

AUDIT SCOPE

4. The original scope of the audit was outlined in the Terms of Reference. The key risks which we identified were :
 - Contracts may not be retained, signed and sealed by all parties
 - The location of contracts may not be known
 - Key documentation such as performance bonds and public liability insurance may not be retained, available and current

We selected a sample of 17 contracts from the Contracts Database and from a range of Directorates. Testing was carried out to confirm that all contracts had been signed and sealed and retained. We examined them to confirm that they were supported by key documentation such as Public Liability Insurance, any contract variations and performance bonds/parent company guarantees.

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AUDIT OPINION

5. Our overall audit opinion, number and rating of recommendations are as follows.

AUDIT OPINION	
Reasonable Assurance	(Definitions of the audit assurance level and recommendation ratings can be found in Appendix B)

Number of recommendations by risk rating		
Priority 1	Priority 2	Priority 3
0	4	1

SUMMARY OF FINDINGS

6. We were able to evidence signed contracts/agreements for all 17 of our sample. Where appropriate they had been signed by the Mayor and sealed. For those contracts in our sample where we expected to see a Performance Bond or Parent Company Guarantee, we were able to see one, apart from one for Company 'A'. The Performance Bond had not been located at the time of issuing this report but continues to be sought by the Head of Service.

7. The need for the contractor to have public liability insurance was documented in all the contracts/agreements in our sample. We saw evidence of up-to-date liability insurance for one of the contracts in our sample but not for the others. From our examination of the supporting documents uploaded to the Contracts Database we were unable to confirm whether or not

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Contract Owners have ensured that contractors have the necessary public liability and other types of insurance required. This should not be taken to read that such insurances are not in place.

8. Legal Services checked the last known location of the contracts prior to the start of our audit and obtained them for us. We found however that there are weaknesses in the arrangement for storing and locating deeds and contracts. This was raised when we carried out this audit previously in October 2017 and we have made a recommendation again to address this finding.
9. The clauses in the contracts which formed our testing sample varied in terms of content and wording, because they were derived from different sources e.g. an industry standard, Crown Commercial Service template, a call off contract framework or London Borough of Bromley standard terms and conditions. We could not see however that access to the current versions of the relevant Council policies are made available to contractors.
10. Our examination of the Contracts Database showed monitoring information e.g. minutes of contract monitoring meetings uploaded to the database for one out of 17 contracts in our sample although we acknowledge that not all the contracts/agreements e.g. IT application contracts warrant the level of monitoring expected of other contracts. It is not a mandatory requirement at present for Contract Owners to upload key supporting documentation and contract monitoring information to the database and we have recommended that it is reviewed. Where this information was not uploaded to the Contracts database, we did not confirm with Contract Owners where they store contract monitoring information or if it is available and accessible to those who need it.
11. The Assistant Director, Governance & Contracts has carried out previously sample checks of documents uploaded to the Contracts Database. We acknowledge that it is a complex and time-consuming task requiring detailed knowledge of contracts and contract procedure rules. The results of those reviews were reported to Chief Officers and the Contracts & Monitoring Sub-Committee of ER&C PDS, which is no longer in place. A guidance note was also issued to all contract owners following the last review.

DETAILED FINDINGS / MANAGEMENT ACTION PLAN

12. The findings of this report, together with an assessment of the risk associated with any control weaknesses identified, are detailed in Appendix A. Any recommendations to management are raised and prioritised, together with management's responses and timescales for implementation. Appendix B details the definition of the audit assurance and priority ratings.

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1. Insurance checks and the levels and types of insurance

Finding

In our discussion with the Council’s Insurance Manager, we were advised that the types and levels of Insurance can vary depending on the contract and we noted that there are varying levels of public liability insurance for the contracts in our sample.

We saw a copy of the current public liability insurance and other types of insurance for one of the contracts in our sample but not for any of the other contracts. The contract clause wording in each case in our sample stated that the contractor is required to have these insurances and specifies the limit of indemnity and that the Council may wish to see the insurance, but we did not see evidence, from our examination of documentation uploaded to the Contracts Database, that this requirement has been checked.

Risk

The Council may be unaware whether or not the contractor has valid insurance policies in place in the event of a claim.

Recommendation

Management should review the existing guidance on insurance checks which Contract Owners are required to carry out to confirm that a contractor has the required public liability and other types of insurance cover.

Particular attention should be paid to the following:

- (i) whether or not the insurance policy is valid for the life of the contract or needs to be renewed annually. If the policy is an annual one then the frequency of subsequent checks should be specified.
- (ii) whether or not the policy insures the contractor in the event of any one occurrence or aggregate throughout the life of the contract,
- (iii) whether or not the contractor has a valid Employers’ Liability insurance for a minimum of £5,000,000 (five million pounds) in respect of any one incident, and
- (iv) whether or not the contractor has professional indemnity insurance, where applicable, valid for up to 6 years after the end of the contract.

Rating

Priority 2

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<p><i>Audit note: We are aware that the Contract Procedure Rules are currently being updated and therefore the Procurement Team should liaise with the Insurance Manager to obtain guidance on this area.</i></p>	
<p><u>Management Response and Accountable Manager</u></p> <p><u>Accountable Manager:</u> All Contract Owners and Contract Approvers with oversight from Assistant Director Governance & Contracts</p> <p>Checking for insurance documents has been advisable but not a mandatory requirement for Contract Owners. There are several provider documents and policies that are required through a contract but with discretion with the Contract Owner as to what is required through monitoring.</p> <p>It is the responsibility of Contract Owners to ensure suitable arrangements are in place for the checking of relevant insurance arrangements with Contractors. For any tender that requires a Selection Process, providers are required to self-certify that they possess the relevant Insurances specified in the Selection Questionnaire. Self-certification is the standard requirement for a range of provider checks. In addition, the Contract held with the provider will specify the Insurances required.</p> <p>Guidance was given to Contract Owners in 2018 that Supporting Documents (including Insurance documents) should be held on the Contracts Database for contracts awarded from April 2018. This has yet to be fully embedded.</p> <p>The Contract Procedure Rules are in the process of being updated with a new version expected to be implemented from April 2021. Subject to prior consultation, consideration can be given to inclusion of a mandatory process for Insurance documentation checks, including mandatory recording on the Contracts Database.</p> <p>This requirement could then be included in the periodic sample checks of Contract Database documentation, the next one taking place in the Spring of 2021.</p>	<p><u>Agreed timescale</u></p> <p>November 2020 for Practice Note in Insurance requirements to be sent to all relevant Officers</p> <p>April 2021 to consider additional requirements for possible inclusion in updated Contract Procedure Rules</p> <p>By June 2021 (or sooner) for extensive sample check of Contracts Database</p>

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<p>It is to be expected that there are different types of insurance required as these are set specific to the arrangements for each contract. This is not an issue.</p> <p>Definitive guidance on the type and level required is next to impossible because of the variables that may apply. However, guidance will be issued to all Contract Owners, the Procurement Team, Legal Team and Insurance colleagues that the level and type of insurance must be determined and documented prior to going out to tender. This will be mirrored in the revised version of the Contract Procedure Rules.</p>	
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2. Recording of contracts, key supporting documents and monitoring information on the Contracts Database

Finding

We were unable to see that all contracts and key supporting documents had been uploaded to the Contracts Database. From our sample of 17 contracts, five of them had not been uploaded as electronic copies to the Contracts Database.

There was one contract in our sample where we did not see a Performance Bond/Parent Company Guarantee. This was for Company 'A'. The Performance Bond was not seen on the Contracts Database and could not be located at the time of issuing this report but continues to be sought by the Head of Service.

The Assistant Director, Governance & Contracts has carried out previously sample checks of documents uploaded to the Contracts Database. The last one was carried out in March 2019 and resulted in a report that RAG rated each contract inspected for the completeness or otherwise of documentation stored on the Contracts Database.

The results of those reviews were reported to Chief Officers and the Contracts & Monitoring Sub-Committee of ER&C PDS, which is no longer in place. Consequently, a Practice Note was issued to all contract owners. Following the second exercise, COE recommended that priority should be given in any future sample checks to contracts with a start date of 2017 or later. It was accepted that Contract Owners may now have difficulty in locating documentation for older contracts (where they may have already tried to do so) especially when they may have subsequently inherited contracts for members of staff no longer at the Council. We acknowledge that it is a complex and time-consuming task

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<p>requiring detailed knowledge of contracts and contract procedure rules but it is a useful exercise, providing assurance to management on oversight and compliance of contract documentation.</p> <p>The Contracts Database Practice Note 2 states: ‘The Contracts Database gives you the facility to upload all documents relevant to each contract, including Monitoring Reports, Minutes of meetings and so on. However, as a minimum you should upload the following: ii. Supporting contract documents Supporting contract documents should ideally be added for all contracts. However, they <u>must</u> be added for all contracts awarded from 1 April 2018. If you do not have a full suite of contract documents, you may not be able to manage the contract effectively.’ From our testing we could only evidence minutes of contract monitoring meetings uploaded to the Contract Database for one of the contracts in our sample.</p> <p><u>Risk</u> Key contract documentation and matters relating to the contract are not known, leading to a risk of ineffective contract management.</p>	
<p><u>Recommendation</u> Management should: (i) Review the existing guidance and consider making it mandatory for contract owners to upload all signed contracts, key supporting documents and monitoring information to the Contracts Database and</p>	<p><u>Rating</u> </p>

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<p>(ii) arrange for a sample check to be carried out within the next twelve months, focusing on contracts with a start date of 2017 and ensure that any issues identified are escalated to COE, Directors and contract owners for them to address.</p>	
<p><u>Management Response and Accountable Manager</u></p> <p><u>Accountable Manager:</u> All Contract Owners and Contract Approvers with oversight from Assistant Director Governance & Contracts</p> <p>As stated in the finding, the current guidance is that the contract and key contract supporting documents should be uploaded to the Contracts Database, required for all contracts with a start date from April 2018. This will be subject to regular sample checking with appropriate follow up action.</p> <p>However, while it notes that the facility for contract management/monitoring documents can be uploaded, it does not require Contract Owners to do so. Many Contract Owners will store such records on their team sites and team drives. The absence of such documentation on the Contracts Database is not a basis to infer that such documents do not exist or cannot be evidenced. Due to the limited document management and document search functions of the Database, it may not be desirable for contract management and general documentation to be held there.</p> <p>The Contract Procedure Rules are in the process of being updated with a new version expected to be implemented from April 2021. Subject to prior consultation, consideration can be given to inclusion of a mandatory process for key contract management documents and mandatory recording on the Contracts Database. This may include minutes of meetings, formal correspondence and similar. These will need to be defined as far as possible and limited – due to the wide range of supporting documentation which may not be practical to store on the Database (particularly with limitations on search functions and document management functions).</p> <p>This requirement could then be included in the periodic sample checks of Contract Database documentation, the next one taking place in the Spring of 2021.</p>	<p><u>Agreed timescale</u></p> <p>April 2021 to consider additional requirements for possible inclusion in updated Contract Procedure Rules</p> <p>By June 2021 (or sooner) for extensive sample check of Contracts Database</p>

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3. Contract clauses	
<p><u>Finding</u></p> <p>During our testing we noted that there were differences in clauses, both in content and wording, for the contracts in our sample. We appreciate that the contracts in our sample had different start dates and purposes but the following policies/procedures were not referred to in all the service-type contracts in our sample:</p> <ul style="list-style-type: none"> Business continuity Bribery and corruption Gratuities Dispute resolution process Right to audit Whistleblowing Complaints procedure Anti-Slavery (for contracts awarded after 2015) <p><u>Risk</u></p> <p>Contractors may not be aware of the Council’s relevant policies which they are expected to comply with.</p>	
<p><u>Recommendation</u></p> <p>The Procurement Team, in conjunction with Legal Services, should :</p> <p>(i) review the content and wording of the clauses in the Council’s contract template and</p>	<p><u>Rating</u></p> <div style="border: 1px solid black; background-color: #ffcc00; padding: 2px; display: inline-block;">Priority 2</div>

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<p>(ii) ensure that where these are included in contracts, the contractor has access to the current versions of the Council’s relevant policies, either via an extranet or other communication arrangement.</p>	
<p><u>Management Response and Accountable Manager</u></p> <p><u>Accountable Manager:</u> Assistant Director Governance & Contracts and Head of Legal</p> <p>There are many different forms of contract, often dependent upon the size, type, procurement (e.g. framework where the framework documentation is used), provider contracts where approved, construction contracts. Contract documentation is reviewed for each tender – which is why there are other differences between similar contracts let at different times.</p> <p>Legal and the Procurement team review every contract prior to going out to tender and prior to issue. Contract documents are constantly updated. Therefore no further specific action is required.</p> <p>As part of the review of the intranet/intranet website, consideration of a standard page containing key Council policies and requirements will be given.</p>	<p><u>Agreed timescale</u></p> <p>In place and ongoing.</p> <p>Review of website by April 2021.</p>

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4. Location of deeds/contracts	
<p><u>Finding</u></p> <p>Prior to the start of the audit, Legal Services told us that the deeds register (spreadsheet) maintained by them was not able to readily identify the whereabouts of all deeds and contracts, partly because the details recorded do not signify the service which a contract relates to and the deeds/contract information recorded e.g. supplier name or property address details, depends on what is included by the officer making the original entry.</p> <p>Access to the spreadsheet to add, edit or delete information is not restricted to a limited number of officers within Legal Services.</p> <p>Original deeds/contract files are not loaned to officers outside of Legal Services. The movement of deeds/contract files within the department is not monitored however.</p> <p>This was identified when the governance of contracts was audited previously in 2017 and a recommendation to address this was made at that time. It was not implemented at that time however and is therefore addressed again in the recommendation below.</p> <p>There is no link between the contract reference used by Legal Services and the contract id used in the Contracts database, so they exist as separate references.</p> <p><u>Risk</u></p> <p>The Council is not aware what deeds/contracts are held in the strong room.</p> <p>Deeds/contracts may be lost or not readily available at any given time, resulting in the Council not being able to confirm what its contractual responsibilities are and/or defend itself in any legal dispute.</p>	
<p><u>Recommendation</u></p> <p>Legal Services should :-</p> <p>(i) carry out a reconciliation of the contents of the strongroom.</p>	<p><u>Rating</u></p> <div style="border: 1px solid black; background-color: #ffcc00; padding: 5px; display: inline-block;">Priority 2</div>

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<p>(ii) review their current processes for recording and monitoring deeds/contracts information so that they can verify the location of deeds/contracts at any time, and ensure that the information held is accurate, timely and complete and</p> <p>(iii) explore with the Procurement Team if and how the contract reference used by Legal Services in their records can be included as a reference in a field in the Contracts Database.</p>	
<p><u>Management Response and Accountable Manager</u></p> <p>We will:</p> <p>(i) put arrangements in place to carry out a reconciliation of the contents of the strongroom. Due to the current situation re COVID-19 it is not possible to put a timescale on this action but it will form part of our future plans for Legal Services.</p> <p>(ii) review our current processes for recording and monitoring deeds/contracts information. We have the Norwel electronic case management system. All contract documents or property documents that are sealed or signed by legal are scanned and a copy saved on Norwel which gives added assurance.</p> <p>(iii) liaise with the Procurement Team to confirm that the Norwel file number used by Legal Services as the identifiable contract reference can be included in an existing field on the Contracts Database. We will then inform the relevant Contract Manager of the Norwel file number to be used in future.</p> <p><u>Accountable Manager:</u></p> <p>Head of Legal Services</p>	<p><u>Agreed timescale</u></p> <p>To be decided</p> <p>31 December 2020</p> <p>31 December 2020</p>

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5. Electronic signatures	
<p><u>Finding</u></p> <p>We discussed with Legal Services and the Head of Procurement about the signing of contracts with other parties and how these might be improved in future.</p> <p>One of the areas discussed was the introduction of a workflow system for the signing of contracts, which could enhance the document process and enable relevant officers in the Council to see or be notified when a contract has been viewed or signed by the other party.</p> <p><u>Risk</u></p> <p>The opportunity to explore and evaluate existing contract processes is not taken, leading to a risk that possible improvements to the contract signing process are not identified.</p>	
<p><u>Recommendation</u></p> <p>Legal Services and the Procurement team should explore and assess the possible advantages of introducing a workflow system for the signing of contracts.</p>	<p><u>Rating</u></p> <div style="border: 1px solid black; background-color: #90ee90; padding: 2px; display: inline-block;">Priority 3</div>
<p><u>Management Response and Accountable Manager</u></p> <p>We will explore electronic signature software. This will require expenditure on a software package with an annual licence fee. Funding will therefore need to be allocated for this. Also, documents that are required to be sealed will still need wet signatures on hard copies.</p> <p><u>Accountable manager</u></p> <p>Head of Legal Services</p>	<p><u>Agreed timescale</u></p> <p>31 December 2020</p>

OPINION DEFINITIONS

Assurance Level

Assurance Level	Definition
Substantial Assurance	There is a sound system of control in place to achieve the service or system objectives. Risks are being managed effectively and any issues identified are minor in nature.
Reasonable Assurance	There is generally a sound system of control in place but there are weaknesses which put some of the service or system objectives at risk. Management attention is required.
Limited Assurance	There are significant control weaknesses which put the service or system objectives at risk. If unresolved these may result in error, abuse, loss or reputational damage and therefore require urgent management attention.
No Assurance	There are major weaknesses in the control environment. The service or system is exposed to the risk of significant error, abuse, loss or reputational damage. Immediate action must be taken by management to resolve the issues identified.

Recommendation ratings

Risk rating	Definition
Priority 1	A high priority finding which indicates a fundamental weakness or failure in control which could lead to service or system objectives not being achieved. The Council is exposed to significant risk and management should address the recommendation urgently.
Priority 2	A medium priority finding which indicates a weakness in control that could lead to service or system objectives not being achieved. Timely management action is required to address the recommendation and mitigate the risk.
Priority 3	A low priority finding which has identified that the efficiency or effectiveness of the control environment could be improved. Management action is suggested to enhance existing controls.